

Message Text

UNCLASSIFIED

PAGE 01 EC BRU 04673 101339Z
ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07
FRB-01 INR-07 NSAE-00 EPG-02 SP-02 STR-04 TRSE-00
LAB-04 SIL-01 OMB-01 L-03 DOTE-00 /051 W
-----101801Z 114728 /53

R 101138Z MAY 77
FM USMISSION EC BRUSSELS
TO SECSTATE WASHDC 3744
INFO ALL EC CAPITALS
AMEMBASSY BERN
USMISSION OECD PARIS

UNCLAS EC BRUSSELS 04673

E.O. 11652: N/A
TAGS: EEC, EWWT
SUBJECT: EC-SWISS INLAND WATERWAY FUND: COURT FINDS INCOMPATIBLE
WITH TREATY

REF: EC BRUSSELS 2518

1. SUMMARY: IN A SURPRISE DECISION, THE EUROPEAN COURT OF JUSTICE (ECJ) RULED ON APRIL 26, 1977 THAT THE ALREADY INITIALLED EC-SWISS LAYING-UP FUND FOR INLAND WATERWAY VESSELS IS INCOMPATIBLE WITH THE TREATY OF ROME. THE ECJ FOUND THAT THE ROLE OF THE SUPERVISORY BOARD AND THE FUND TRIBUNAL "CONSTITUTES BOTH A SURRENDER OF THE INDEPENDENCE OF ACTION OF THE COMMUNITY IN ITS EXTERNAL RELATIONS AND A CHANGE IN THE INTERNAL CONSTITUTION OF THE COMMUNITY". COMMISSION OFFICIALS ARE EXAMINING THE ECJ'S OPINION AND BELIEVE THE NECESSARY CHANGES IN THE AGREEMENT CAN BE MADE TO CONFORM WITH THE ECJ'S RULING. END SUMMARY

2. THE ECJ'S DECISION PUBLISHED IN OJ C-107 OF MAY 3, 1977 (COPIES BEING POUCHED TO RPE) STARTLED THE EC COMMISSION AND MEMBER STATES. THE AGREEMENT FOR A LAYING-UP FUND FOR INLAND WATERWAY VESSELS HAD RESULTED FROM NEGOTIATIONS
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 EC BRU 04673 101339Z

INVOLVING SWITZERLAND, BELGIUM, FRG, FRANCE, LUXEMBOURG, THE NETHERLANDS, UK AND A COMMISSION REPRESENTATIVE. THE DRAFT AGREEMENT WAS INITIALLED ON JULY 9, 1976 AND SENT TO THE ECJ ON SEPTEMBER 15 FOR AN ADVISORY OPINION PURSUANT TO EEC ARTICLE 228. IN ITS REQUEST FOR AN OPINION THE COMMISSION ASKED THE ECJ TO EXAMINE THREE POINTS REGARDING COMPATIBILITY WITH THE ROME TREATY;

(1) ARE EEC ARTICLES 74 AND 75 (COMMON TRANSPORT POLICY) A SUFFICIENT LEGAL BASIS FOR THE PROPOSED AGREEMENT? (2) CAN THE AGREEMENT GRANT DECISION MAKING POWERS TO THE FUND ORGANS? (E) DO THE ORGANIZATION AND POWERS OF THE FUND TRIBUNAL CONFLICT WITH AUTHORITY GIVEN BY THE ROME TREATIES TO THE ECJ? THE COMMISSION, ADDRESSING THESE POINTS, ARGUED THAT BECAUSE OF THE VERY SPECIFIC AND LIMITED NATURE OF THE AUTHORITY GRANTED TO THE FUND ORGANIZATIONS (SUPERVISORY BOARD, BOARD OF MANAGEMENT AND THE TRIBUNAL) NO CONFLICT EXISTED.

3. THE ECJ RULED ON POINT (1) THAT EEC ARTICLE 75 "SUPPLIES AS REGARDS THE COMMUNITY, THE NECESSARY LEGAL BASIS TO ESTABLISH THE SYSTEM CONCERNED." ON POINT (2), THE COURT HELD THAT BECAUSE SOME PROVISIONS OF THE AGREEMENT EFFECT ALL MEMBER STATES, OTHER PROVISIONS ARE APPLICABLE ONLY TO SPECIFIC MEMBER STATES AND THE COMMISSION PLAYS ONLY AN EXTREMELY LIMITED ROLE, THE POWER OF COMMUNITY INSTITUTIONS IS QUESTIONED AND THE RELATIONSHIPS BETWEEN MEMBER STATES IS ALTERED IN A MANNER INCONSISTENT WITH THE TREATY. BY SUBSTITUTING ORGANS CREATED BY THE AGREEMENT FOR COMMUNITY INSTITUTIONS IN A DECISION-MAKING ROLE IN AN AREA OF EC COMPETENCE THE REQUIREMENTS OF UNITY, AND SOLIDARITY NECESSARY FOR COMMON ACTION ARE NOT PRESENT. REGARDING POINT (3) THE ECJ SAID THE ESTABLISHMENT OF THE FUND TRIBUNAL WAS NOT FEASIBLE AS PROPOSED. QUESTIONS OVER JURISDICTION BETWEEN THE ECJ AND FUND TRIBUNAL WOULD ARISE. ALSO, CONFLICTS OF INTEREST COULD OCCUR, IF, AS PROPOSED THE UNCLASSIFIED

UNCLASSIFIED

PAGE 03 EC BRU 04673 101339Z

TRIBUNAL CONTAINED JUDGES APPOINTED BY THE ECJ.

4. COMMISSION REACTION TO THE COURT'S FINDING WAS SURPRISE. HOWEVER, OFFICIALS BELIEVE THAT THE POLITICAL WILL TO CREATE THE FUND IS STILL PRESENT. BECAUSE THE ECJ AGREED THAT THE LEGAL BASIS FOR SUCH AN AGREEMENT WAS FOUND IN THE TREATY, THE LEGAL SERVICE IS IN PROCESS OF EXAMING THE OPINION AND MAKING RECOMMENDATIONS AS TO HOW THE STRUCTURE OF THE FUND'S INSTITUTIONS MUST BE CHANGED TO COMPLY WITH THE ECJ'S OBJECTIONS. IN ANY CASE, IT SEEMS CLEAR THAT THE AGREEMENT WILL HAVE TO BE RE-NEGOTIATED. HINTON

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TREATY COMPLIANCE, COMMUNITY RELATIONS, INLAND WATERWAY TRANSPORTATION
Control Number: n/a
Copy: SINGLE
Sent Date: 10-May-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977ECBRU04673
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770164-0977
Format: TEL
From: EC BRUSSELS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770576/aaaacnbr.tel
Line Count: 109
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 1756c397-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 77 EC BRUSSELS 2518
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 08-Nov-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2587319
Secure: OPEN
Status: NATIVE
Subject: EC-SWISS INLAND WATERWAY FUND: COURT FINDS INCOMPATIBLE WITH TREATY
TAGS: EWWT, SZ, EEC
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/1756c397-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009